

AMENDED IN ASSEMBLY APRIL 28, 2016

AMENDED IN ASSEMBLY APRIL 11, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2693**

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**Introduced by Assembly Member Dababneh**  
**(Coauthors: Assembly Members Travis Allen, Hadley, and Linder)**

February 19, 2016

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An act to amend Section 53313.5 of the Government Code, to amend Section 26054 of the Public Resources Code, and to amend Sections 5898.15, 5898.28, and 5898.30 ~~of~~ *of, and to amend, renumber, and add Section 5898.16 of*, the Streets and Highways Code, relating to contractual assessments.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2693, as amended, Dababneh. Contractual assessments: financing requirements: property improvements.

Existing law defines “property assessed clean energy bond,” commonly known as a PACE bond, to mean a bond that is secured by a voluntary contractual assessment or by certain special taxes on property, as specified.

This bill would delete the reference to bonds secured by special taxes.

Existing law authorizes the legislative body of a public agency, as defined, to determine that it would be convenient, advantageous, and in the public interest to designate an area within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance certain improvements, including the installation of distributed generation renewable energy sources or energy

or water efficiency improvements that are permanently fixed to real property, as specified. Existing law authorizes the public agency to issue bonds to be repaid by voluntary contractual assessments, and to enter into a relationship with an underwriter or financial institution that allows the sequential issuance of a series of bonds as the need arises. Existing law requires the interest rate on bonds to be fixed at the time each bond is issued, unless the bond is issued to finance improvements to nonresidential private property or residential private property with 4 or more units. Existing law also provides that certain provisions relating to redemption of bonds prior to their scheduled maturity date or refinance of outstanding bonds only apply to nonresidential private property or residential private property with 4 or more units.

This bill, with respect to residential private property, would instead require the interest rate on the bonds, when issued, to be fixed unless the property consists of 5 or more units. The bill would provide that the provisions relating to redemption of bonds prior to their scheduled maturity date, or refinance of outstanding bonds, with respect to residential private property, would apply to property that consists of 5 or more units.

Existing law provides that an assessment under these provisions, and any interest and penalties, until paid, constitute a lien against the property on which the assessment was made. Existing law provides that certain other provisions, including provisions relating to lien priority, apply to liens imposed relative to these assessments.

This bill would, except for nonresidential private property or residential private property with 5 or more units, delete the reference to the other provisions relating to lien priority, and instead provide that an assessment under these provisions shall have the force, effect, and priority of a judgment lien as established by its date of recordation.

*Existing law, if bonds have not been issued by a public agency, authorizes the public agency to transfer its right, title, and interest to voluntary contractual assessments to another party, as specified. Existing law, however, provides that initiation and prosecution of a foreclosure action from a delinquency in the payment of voluntary contractual assessments remains the responsibility of the public agency, which shall retain the sole right to enforce its senior lien status.*

*This bill would provide that if the holder of a note secured by a deed of trust for purchase money or a refinanced purchase money obligation institutes a foreclosure, or if a public agency institutes a foreclosure, the interest of the purchase money noteholder is treated as an*

*encumbrance that is senior to any delinquency of specified voluntary assessments.*

Existing law prohibits a public agency from permitting a property owner to participate in any program established pursuant to these provisions if the owner's participation would result in the total amount of any annual property taxes and assessments exceeding 5% of the property's market value, as determined at the time of approval of the owner's contractual assessment.

~~This bill would also, except for situations involving bonds issued to improve nonresidential private property or residential private property with 5 or more units, also prohibit a public agency from permitting a property owner who is a homeowner applicant to participate in a program pursuant to these provisions unless the property owner has been provided with a Truth in Lending Act-Real Estate Settlement Procedures Act Integrated Mortgage Disclosure for the obligation being incurred or completed financing estimate document or a substantially equivalent document. The bill would also prohibit a public agency from permitting a property owner to participate in a program pursuant to these provisions if the total mortgage-related debt and contractual assessment-related debt on the underlying property exceeds would exceed the fair market value of the property at the time of the agreement. owner's contractual assessment, if the mortgage-related debt on the property alone is equal to 90% or greater of the property's fair market value at the time of the approval of the owner's contractual assessment, or if the owner is unable to meet specified requirements.~~

This bill would provide that the failure of a public agency to comply with ~~either of these 2 prohibitions voids renders~~ the contractual obligations of the property owner for the contractual ~~assessment. assessment void.~~

The Mello-Roos Community Facilities Act of 1982 specifies the requirements for the establishment of a community facilities district, including, among other things, a petition, a hearing, the establishment of the boundaries of the community facilities district, and an election on the question. A community facilities district formed pursuant to that law is authorized to, among other things, finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements to or on real property and in buildings, as specified.

This bill would require that an assessment levied or a delinquency collected in connection with those improvements be collected using the procedures described above.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 53313.5 of the Government Code is  
2 amended to read:

3 53313.5. A community facilities district may also finance the  
4 purchase, construction, expansion, improvement, or rehabilitation  
5 of any real or other tangible property with an estimated useful life  
6 of five years or longer or may finance planning and design work  
7 that is directly related to the purchase, construction, expansion, or  
8 rehabilitation of any real or tangible property. The facilities need  
9 not be physically located within the district. A district may not  
10 lease out facilities that it has financed except pursuant to a lease  
11 agreement or annexation agreement entered into prior to January  
12 1, 1988. A district may only finance the purchase of facilities  
13 whose construction has been completed, as determined by the  
14 legislative body, before the resolution of formation to establish  
15 the district is adopted pursuant to Section 53325.1, except that a  
16 district may finance the purchase of facilities completed after the  
17 adoption of the resolution of formation if the facility was  
18 constructed as if it had been constructed under the direction and  
19 supervision, or under the authority of, the local agency that will  
20 own or operate the facility. For example, a community facilities  
21 district may finance facilities, including, but not limited to, the  
22 following:

23 (a) Local park, recreation, parkway, and open-space facilities.

24 (b) Elementary and secondary schoolsites and structures  
25 provided that the facilities meet the building area and cost standards  
26 established by the State Allocation Board.

27 (c) Libraries.

28 (d) Child care facilities, including costs of insuring the facilities  
29 against loss, liability insurance in connection with the operation  
30 of the facility, and other insurance costs relating to the operation  
31 of the facilities, but excluding all other operational costs. However,

1 the proceeds of bonds issued pursuant to this chapter shall not be  
2 used to pay these insurance costs.

3 (e) The district may also finance the construction or  
4 undergrounding of water transmission and distribution facilities,  
5 natural gas pipeline facilities, telephone lines, facilities for the  
6 transmission or distribution of electrical energy, and cable  
7 television lines to provide access to those services to customers  
8 who do not have access to those services or to mitigate existing  
9 visual blight. The district may enter into an agreement with a public  
10 utility to utilize those facilities to provide a particular service and  
11 for the conveyance of those facilities to the public utility. "Public  
12 utility" shall include all utilities, whether public and regulated by  
13 the Public Utilities Commission, or municipal. If the facilities are  
14 conveyed to the public utility, the agreement shall provide that the  
15 cost or a portion of the cost of the facilities that are the  
16 responsibility of the utility shall be refunded by the public utility  
17 to the district or improvement area thereof, to the extent that  
18 refunds are applicable pursuant to (1) the Public Utilities Code or  
19 rules of the Public Utilities Commission, as to utilities regulated  
20 by the commission, or (2) other laws regulating public utilities.  
21 Any reimbursement made to the district shall be utilized to reduce  
22 or minimize the special tax levied within the district or  
23 improvement area, or to construct or acquire additional facilities  
24 within the district or improvement area, as specified in the  
25 resolution of formation.

26 (f) The district may also finance the acquisition, improvement,  
27 rehabilitation, or maintenance of any real or other tangible property,  
28 whether privately or publicly owned, for flood and storm protection  
29 services, including, but not limited to, storm drainage and treatment  
30 systems and sandstorm protection systems.

31 (g) The district may also pay in full all amounts necessary to  
32 eliminate any fixed special assessment liens or to pay, repay, or  
33 defease any obligation to pay or any indebtedness secured by any  
34 tax, fee, charge, or assessment levied within the area of a  
35 community facilities district or may pay debt service on that  
36 indebtedness. When the amount financed by the district is to pay  
37 a tax, fee, charge, or assessment imposed by a public agency other  
38 than the one conducting the proceedings, and if the amount  
39 provided to the other public agency will not be entirely used to  
40 pay off or prepay an assessment lien or special tax obligation

1 pursuant to the property owner's legal right to do so, the written  
2 consent of the other public agency is required. In addition, tax  
3 revenues of a district may be used to make lease or debt service  
4 payments on any lease, lease-purchase contract, or certificate of  
5 participation used to finance facilities authorized to be financed  
6 by the district.

7 (h) Any other governmental facilities that the legislative body  
8 creating the community facilities district is authorized by law to  
9 contribute revenue to, or construct, own, or operate. However, the  
10 district shall not ~~operate or maintain~~ *operate, maintain*, or, except  
11 as otherwise provided in subdivisions (e) and (k), have any  
12 ownership interest in any facilities for the transmission or  
13 distribution of natural gas, telephone service, or ~~electrical energy~~.  
14 *electricity*.

15 (i) (1) A district may also pay for the following:

16 (A) Work deemed necessary to bring buildings or real property,  
17 including privately owned buildings or real property, into  
18 compliance with seismic safety standards or regulations. Only  
19 work certified as necessary to comply with seismic safety standards  
20 or regulations by local building officials may be financed. No  
21 project involving the dismantling of an existing building and its  
22 replacement by a new building, nor the construction of a new or  
23 substantially new building may be financed pursuant to this  
24 subparagraph. Work on qualified historical buildings or structures  
25 shall be done in accordance with the State Historical Building  
26 Code (Part 2.7 (commencing with Section 18950) of Division 13  
27 of the Health and Safety Code).

28 (B) In addition, within any county or area designated by the  
29 President of the United States or by the Governor as a disaster area  
30 or for which the Governor has proclaimed the existence of a state  
31 of emergency because of earthquake damage, a district may also  
32 pay for any work deemed necessary to repair any damage to real  
33 property directly or indirectly caused by the occurrence of an  
34 earthquake cited in the President's or the Governor's designation  
35 or proclamation, or by aftershocks associated with that earthquake,  
36 including work to reconstruct, repair, shore up, or replace any  
37 building damaged or destroyed by the earthquake, and specifically  
38 including, but not limited to, work on any building damaged or  
39 destroyed in the Loma Prieta earthquake that occurred on October  
40 17, 1989, or by its aftershocks. Work may be financed pursuant

1 to this subparagraph only on property or buildings identified in a  
2 resolution of intention to establish a community facilities district  
3 adopted within seven years of the date on which the county or area  
4 is designated as a disaster area by the President or by the Governor  
5 or on which the Governor proclaims for the area the existence of  
6 a state of emergency.

7 (2) Work on privately owned property, including reconstruction  
8 or replacement of privately owned buildings pursuant to  
9 subparagraph (B) of paragraph (1), may only be financed by a tax  
10 levy if all of the votes cast on the question of levying the tax, vote  
11 in favor of levying the tax, or with the prior written consent to the  
12 tax of the owners of all property that may be subject to the tax, in  
13 that case the prior written consent shall be deemed to constitute a  
14 vote in favor of the tax and any associated bond issue. Any district  
15 created to finance seismic safety work on privately owned  
16 buildings, including repair, reconstruction, or replacement of  
17 privately owned buildings pursuant to this subdivision, shall consist  
18 only of lots or parcels that the legislative body finds have buildings  
19 that were damaged or destroyed by the earthquake cited pursuant  
20 to subparagraph (B) of paragraph (1) or by the aftershocks of that  
21 earthquake.

22 (j) A district may also pay for the following:

23 (1) Work deemed necessary to repair and abate damage caused  
24 to privately owned buildings and structures by soil deterioration.  
25 “Soil deterioration” means a chemical reaction by soils that causes  
26 structural damage or defects in construction materials including  
27 concrete, steel, and ductile or cast iron. Only work certified as  
28 necessary by local building officials may be financed. No project  
29 involving the dismantling of an existing building or structure and  
30 its replacement by a new building or structure, nor the construction  
31 of a new or substantially new building or structure may be financed  
32 pursuant to this paragraph.

33 (2) Work on privately owned buildings and structures pursuant  
34 to this subdivision, including reconstruction, repair, and abatement  
35 of damage caused by soil deterioration, may only be financed by  
36 a tax levy if all of the votes cast on the question of levying the tax  
37 vote in favor of levying the tax. Any district created to finance the  
38 work on privately owned buildings or structures, including  
39 reconstruction, repair, and abatement of damage caused by soil  
40 deterioration, shall consist only of lots or parcels on which the

1 legislative body finds that the buildings or structures to be worked  
2 on pursuant to this subdivision suffer from soil deterioration.

3 (k) A district may also finance the acquisition, improvement,  
4 rehabilitation, or maintenance of any real or other tangible property,  
5 whether privately or publicly owned, for the purposes of removal  
6 or remedial action for the cleanup of any hazardous substance  
7 released or threatened to be released into the environment. As used  
8 in this subdivision, “remedial action” and “removal” shall have  
9 the meaning set forth in Sections 25322 and 25323, respectively,  
10 of the Health and Safety Code, and “hazardous substance” shall  
11 have the meaning set forth in Section 25281 of the Health and  
12 Safety Code.

13 (l) A district may also finance and refinance the acquisition,  
14 installation, and improvement of energy efficiency, water  
15 conservation, and renewable energy improvements that are affixed,  
16 as specified in Section 660 of the Civil Code, to or on real property  
17 and in buildings, whether the real property or buildings are  
18 privately or publicly owned. Energy efficiency, water conservation,  
19 and renewable energy improvements financed by a district may  
20 only be installed on a privately owned building and on privately  
21 owned real property with the prior written consent of the owner  
22 or owners of the building or real property. This chapter shall not  
23 be used to finance installation of energy efficiency, water  
24 conservation, and renewable energy improvements on a privately  
25 owned building or on privately owned real property in connection  
26 with the initial construction of a residential building unless the  
27 initial construction is undertaken by the intended owner or  
28 occupant. An assessment levied or a delinquency collected pursuant  
29 to this subdivision shall be collected using the procedures set out  
30 in Section 26054 of the Public Resource Code and in Sections  
31 5898.15 and 5898.30 of the Streets and Highways Code.

32 (m) Any improvement on private property authorized to be  
33 financed by this section shall constitute a “public facility” for  
34 purposes of this chapter and a “public improvement” for purposes  
35 of Part 1 (commencing with Section 3100) and Part 2 (commencing  
36 with Section 3110) of Division 4.5 of the Streets and Highways  
37 Code, whether the improvement is owned by a private entity, if  
38 the legislative body has determined that the improvement provides  
39 a public benefit, or the improvement is owned by a public agency.



1 SEC. 2. Section 26054 of the Public Resources Code is  
2 amended to read:

3 26054. “Property Assessed Clean Energy bond” or “PACE  
4 bond” means a bond that is secured by either of the following:

5 (a) A voluntary contractual assessment on property authorized  
6 pursuant to paragraph (2) of subdivision (a) of Section 5898.20 of  
7 the Streets and Highways Code.

8 (b) A voluntary contractual assessment on property to finance  
9 the installation of distributed generation renewable energy sources,  
10 electric vehicle charging infrastructure, or energy or water  
11 efficiency improvements.

12 SEC. 3. Section 5898.15 of the Streets and Highways Code is  
13 amended to read:

14 5898.15. (a) A public agency shall not permit a property owner  
15 to participate in any program established pursuant to this chapter  
16 if ~~the~~ *any of the following apply*:

17 (1) *The owner’s participation would result in the total amount*  
18 ~~of any the~~ *annual property taxes and assessments exceeding 5*  
19 *percent of the property’s fair market value, as determined at the*  
20 *time of approval of the owner’s contractual assessment.*

21 ~~(b) (1) Except as otherwise provided in subdivision (c), a public~~  
22 ~~agency shall not permit a property owner to participate in a~~  
23 ~~program pursuant to this chapter unless the property owner has~~  
24 ~~been provided with a federal Truth in Lending Act–Real Estate~~  
25 ~~Settlement Procedures Act Integrated Mortgage Disclosure for the~~  
26 ~~obligation being incurred that is required for mortgages by the~~  
27 ~~federal Consumer Financial Protection Bureau.~~

28 ~~(2) Except as otherwise provided in subdivision (c), a public~~  
29 ~~agency shall not permit the~~ *The total mortgage-related debt and*  
30 *contractual assessment-related debt on the underlying property to*  
31 *would exceed the fair market value of the property at the time of*  
32 ~~the agreement.~~ *property, as determined at the time of the owner’s*  
33 *contractual assessment.*

34 (3) *The total mortgage-related debt on the property alone is*  
35 *equal to 90 percent or greater of the property’s fair market value,*  
36 *as determined at the time of approval of the owner’s contractual*  
37 *assessment.*

38 (4) *The property owner is unable to meet all of the following*  
39 *criteria:*

1 (A) The property owner shall certify that the property taxes for  
2 the property are current and that there is no more than one late  
3 payment during the previous three years or the period of time  
4 during which the owner has owned the property, whichever is less.

5 (B) The property owner shall certify that he or she is not  
6 currently in default on any debt secured by the property and that  
7 there is no more than one late payment during the 12-month period  
8 preceding the time of the owner's contractual assessment and that  
9 late payment, if any, was submitted no later than 30 days after the  
10 due date.

11 (C) If the property owner is a homeowner applicant, the property  
12 owner has not had any active bankruptcies within the last seven  
13 years. This criterion can be met if a property owner's bankruptcy  
14 was discharged between two and seven years before the application  
15 date and the property owner has not had any mortgage or  
16 nonmortgage payments past due for more than 60 days in the most  
17 recent 24 months.

18 (D) The property owner does not have an involuntary lien  
19 recorded against the property in excess of one thousand dollars  
20 (\$1,000).

21 (b) If a property owner is a homeowner applicant, a public  
22 agency shall not permit the property owner to participate in any  
23 program established pursuant to this chapter unless the property  
24 owner has been provided with a completed financing estimate  
25 document set forth in Section 5898.16, or a substantially equivalent  
26 document that displays the same information in a substantially  
27 similar format.

28 ~~(3)~~

29 (c) Failure to comply with the requirements of either paragraph  
30 ~~(1) or (2)~~ voids subdivision (a) or (b) renders the contractual  
31 obligations of a property owner for a contractual assessment entered  
32 into pursuant to this chapter. ~~chapter void.~~

33 ~~(e) Subdivision (b) does not apply to bonds issued to improve~~  
34 ~~nonresidential private property or residential private property with~~  
35 ~~five or more units pursuant to Section 5898.28.~~

36 (d) Except as provided in ~~subdivision (b)~~, subdivisions (a) and  
37 (b), nothing in this chapter shall be construed to void or otherwise  
38 release a property owner from the contractual obligations incurred  
39 by a contractual assessment on a property.

SEC. 4. Section 5898.16 of the Streets and Highways Code is amended and renumbered to read:

~~5898.16.~~

5898.17. All references to financing in this chapter shall be deemed to also refer to refinancing, except that with respect to refinancing, the legislative body shall conclude that providing the refinancing will result in an increased adoption of the improvements authorized to be financed by this chapter. This section does not constitute a change in, but is declaratory and a clarification of existing law.

SEC. 5. Section 5898.16 is added to the Streets and Highways Code, to read:

5898.16. The disclosure set forth below shall be completed and delivered to a homeowner as soon as practicable before, and in no event later than when, a homeowner becomes obligated on an agreement to a voluntary assessment described in this chapter, Section 26054 of the Public Resources Code, or Section 53328.1 of the Government Code.

*Financing Estimate and Disclosure*

*Notice to Homeowners: The financing arrangement described below will result in an assessment against your property which will be collected along with your property taxes. The assessment may jeopardize your ability to sell or refinance your property unless you repay the underlying debt.*

*There may be cheaper alternative financing arrangements available from conventional lenders. You should read and review the terms carefully, and if necessary, consult with a tax professional or attorney.*

**Products and Costs**

Product costs (including  
labor/installation) \$ \_\_\_\_\_

**Description**

- 1.
- 2.
- 3.

**Financing Costs**

Application fees and costs \$ \_\_\_\_\_

Prepaid Interest \$ \_\_\_\_\_

Other Costs \$ \_\_\_\_\_

1 *Total Amount Financed* \$ \_\_\_\_\_

2

3 **Annual Percentage Rate (APR)** \_\_\_\_\_ %

4 *Simple Interest Rate* \_\_\_\_\_ %

5 *Total Annual Principal, Interest, and* \$ \_\_\_\_\_

6 *Administrative Fees*

7

8 *Note: If your property taxes are paid through an impound account, your lender*  
 9 *may apportion the amount and add it to your monthly payment.*

10 *See “Other important considerations,” below*

11 **Total Amount you will have**

12 **paid over the life of the**

13 **loan** \$ \_\_\_\_\_

14

15 **Other Costs**

16 *Appraisal Fees* \$ \_\_\_\_\_

17 *Bond related costs* \$ \_\_\_\_\_

18 *Annual Administrative fees* \$ \_\_\_\_\_

19 *Estimated closing costs* \$ \_\_\_\_\_

20 *Credit Reporting Fees* \$ \_\_\_\_\_

21 *Recording Fees*

22

23 **Total Financing Costs and**

24 **Closing Costs** \$ \_\_\_\_\_

25 *Estimated Cash (out of*

26 *pocket) to close* \$ \_\_\_\_\_

27

28

29 **Other Terms**

30 *Prepayment fee* ☐ No ☐ Yes \_\_\_\_\_

31 *Assumable by new owner* ☐ No ☐ Yes \_\_\_\_\_

32

33 **Additional Information About This Financing**

34 **Comparisons** [Use this information to compare to other financing options]

35

36

37 *In 10 years* \$ \_\_\_\_\_ *Principal you will have paid off.*

38 \$ \_\_\_\_\_ *Amount of interest you have paid.*

39 \$ \_\_\_\_\_ *Amount of financing and other costs*

40 *you will have paid.*

\$ \_\_\_\_\_ Total you will have paid.

Annual Percentage Rate \_\_\_\_\_%

Total Interest Paid (as a percentage of all the \_\_\_\_\_%  
payments you have made)

**Other Important Considerations**

Assumption by New Buyer ☐ Yes - Allowed on original  
terms  
☐ No - Not Allowed on  
original terms

I understand that if I refinance my home, my mortgage company may require  
me to pay off the full remaining balance of this obligation. If I sell my home,  
the buyer or their mortgage company may require me to pay off the full  
remaining balance of this obligation.

\_\_\_\_\_  
[Borrower initials]

**Monthly Mortgage Payments**

Your payments will be added to your property tax bill. Whether you pay your  
property taxes through your mortgage payment, using an impound account,  
or if you pay them directly to the tax collector, you will need to save an  
estimated \$ \_\_\_\_\_ for your first tax installment. After your first payment, if  
you pay your taxes through an impound account, your monthly mortgage  
payment should be adjusted by your lender to cover your increased property  
tax bill.

\_\_\_\_\_  
[Borrower initials]

Tax Benefits: Consult your tax advisor regarding tax credits, credits and  
deductions, tax deductibility, and other tax benefits available. Making an  
appropriate application for the benefit is your responsibility.

\_\_\_\_\_  
[Borrower initials]

**Confirmation of Receipt**

This confirms the receipt of the information in this form. You do not have to  
accept this financing just because you acknowledge that you have received or  
signed this form, and it is NOT a contract.

1  
2  
3 \_\_\_\_\_  
4 [Property Owner Signature - Date]

\_\_\_\_\_

[Property Owner Signature  
- Date]

5  
6 ~~SEC. 4.~~

7 SEC. 6. Section 5898.28 of the Streets and Highways Code is  
8 amended to read:

9 5898.28. (a) A public agency may issue bonds pursuant to this  
10 chapter, the principal and interest for which would be repaid by  
11 voluntary contractual assessments. A public agency may advance  
12 its own funds to finance work to be repaid through voluntary  
13 contractual assessments, and may from time to time sell bonds to  
14 reimburse itself for those advances. A public agency may enter  
15 into a relationship with an underwriter or financial institution that  
16 would allow the sequential issuance of a series of bonds, each bond  
17 being issued as the need arose to finance work to be repaid through  
18 voluntary contractual assessments. The interest rate of each bond  
19 may be determined by an appropriate index, but shall be fixed at  
20 the time each bond is issued unless the bond is issued to finance  
21 improvements to nonresidential private property or residential  
22 private property with five or more units. Bond proceeds may be  
23 used to establish a reserve fund for debt service or paying the costs  
24 of foreclosure on properties participating in the program, to fund  
25 capitalized interest for a period up to two years from the date of  
26 issuance of the bonds, to fund the administrative fee required for  
27 participation in the PACE Reserve Program established pursuant  
28 to Chapter 4 (commencing with Section 26050) of Division 16 of  
29 the Public Resources Code, and to pay for expenses incidental to  
30 the issuance and sale of the bonds. Division 10 (commencing with  
31 Section 8500) shall apply to any bonds issued pursuant to this  
32 section, insofar as that division is not in conflict with this chapter.

33 (b) (1) Notwithstanding any provision of this division or the  
34 Improvement Act of 1915 (Division 10 (commencing with Section  
35 8500)), a public agency may transfer its right, title, and interest in  
36 and to any voluntary contractual assessments, if bonds have not  
37 been issued pursuant to subdivision (a). The public agency and  
38 the transferee shall enter into an agreement that, among other  
39 things, identifies the specific period of time during which the  
40 transfer of voluntary contractual assessments will be operative,

1 not to exceed three years. Except as provided in paragraph (2), a  
2 transfer of any voluntary contractual assessments under this  
3 subdivision shall be treated as a true and absolute transfer of the  
4 asset so transferred for the period of the transfer and not as a pledge  
5 or grant of a security interest by the public agency for any  
6 borrowing. The characterization of the transfer of any of those  
7 assets as an absolute transfer by the public agency shall not be  
8 negated or adversely affected by the fact that only a portion of any  
9 voluntary contractual assessment is transferred, nor by any  
10 characterization of the transferee for purposes of accounting,  
11 taxation, or securities regulation, nor by any other factor  
12 whatsoever. As used in this section, “transfer” means sale,  
13 assignment, or other transfer.

14 (2) Nothing in this subdivision shall be construed to authorize  
15 the transferee to initiate and prosecute a foreclosure action resulting  
16 from a delinquency in the payment of the voluntary contractual  
17 assessment. Initiation and prosecution of a foreclosure action shall  
18 remain the responsibility of the public agency, which ~~shall~~ *shall*,  
19 *subject to paragraph (3)*, retain the sole right to enforce its senior  
20 lien status.

21 (3) *When a holder of a note secured by a deed of trust for*  
22 *purchase money or a refinanced purchase money obligation*  
23 *institutes a foreclosure, or when the public agency institutes a*  
24 *foreclosure, the interest of the purchase money noteholder shall*  
25 *be treated as an encumbrance that is senior to any delinquency of*  
26 *a voluntary assessment described in this chapter, Section 26054*  
27 *of the Public Resources Code, or Section 53328.1 of the*  
28 *Government Code. The seniority of the purchase money obligation*  
29 *shall be retained regardless of whether the delinquency occurred*  
30 *before or after the purchase money obligation was recorded*  
31 *against the property. In enacting this paragraph, the Legislature*  
32 *recognizes that the voluntary special assessments authorized by*  
33 *this chapter are unique, and require unique treatment of their*  
34 *secured priority. This paragraph shall not be interpreted or applied*  
35 *to affect the status or priority of any municipal or county lien other*  
36 *than a lien addressed in this section, nor shall it create any implied*  
37 *precedent for the interpretation of any other remedy or collection*  
38 *mechanism available to a governmental entity. The change in*  
39 *priority effected by this paragraph applies to assessments agreed*  
40 *to on or after January 1, 2017.*

(c) Division 10 (commencing with Section 8500) shall apply to any bonds issued pursuant to this section, insofar as that division is not in conflict with this chapter. Notwithstanding Part 16 (commencing with Section 8880) of Division 10, if any reserve fund is established in whole or in part with legally available moneys of one or more public agencies other than bond proceeds, the public agency or agencies may provide that a property owner who prepays all or a portion of the assessment shall not be credited with the public agency moneys in the reserve fund and there shall be no reduction in the assessment pursuant to Sections 8881 or 8884, and the public agency moneys in the reserve account shall not be used to redeem bonds pursuant to Section 8885 and any public agency moneys remaining in the reserve fund at the maturity of the bonds shall be disbursed to the public agency free and clear of the lien of the issuing instrument. Any excess bond proceeds may be used to pay principal of and interest on the bonds in addition to any other use permitted by Division 10 (commencing with Section 8500).

(d) Notwithstanding any other law, the public agency may conclude that it is in the public interest for bonds issued by the public agency pursuant to this chapter to not be subject to redemption prior to their scheduled maturity date except as a result of the prepayment in whole or in part of contractual assessments. Notwithstanding any other limitations set forth in law, and with respect to bonds issued to finance improvements to nonresidential property or residential property with five or more units, the redemption premium associated with a redemption of bonds as a result of a contractual assessment prepayment shall be determined by agreement of the public agency issuing the bonds, the property owner, and the initial purchaser of the bonds.

(e) (1) Without the prior written approval of the property owner, and notwithstanding any other law, a public agency may issue bonds pursuant to this chapter to refinance outstanding bonds payable from contractual assessments levied pursuant to this chapter if all of the following are true:

(A) The total interest cost to maturity on the refunding bonds is less than the total interest cost to maturity on the bonds to be refunded.

(B) The final maturity date of the refunding bonds is not later than the final maturity date of the refunded bonds, except that if



the bonds to be refunded are variable rate bonds, the final maturity date of the refunding bonds may extend to, but not beyond, the useful life of the financed improvements.

(C) The total interest component of the scheduled contractual assessment installments to maturity, after issuance of the refunding bonds, is less than the total interest component of the scheduled contractual assessment installments to maturity prior to issuance of the refunding bonds.

(2) For purposes of this section, in connection with the issuance of fixed rate bonds to refinance variable rate bonds, the interest rate on the refunded bonds for purpose of demonstrating compliance with this section may be assumed to be the maximum possible interest rate on the bonds to be refunded as long as the legislative body concludes that the public interest will be served by issuing fixed rate bonds to refinance the outstanding variable rate bonds. In connection with an issuance of refunding bonds under this chapter, the legislative body may direct that an amendment to the document required by subdivision (d) of Section 5898.24 be recorded to reflect the revised contractual assessment installment schedule.

(f) With the prior written approval of the owner of nonresidential property or residential property with five or more units, and notwithstanding any other law, a public agency may issue bonds pursuant to this chapter to refinance outstanding bonds payable from contractual assessments levied pursuant to this chapter without complying with subdivision (e). The final maturity date of the refunding bonds issued pursuant to this subdivision may be later than the final maturity date of the bonds being refunded as long as the final maturity date of the refunding bonds does not extend beyond the useful life of the financed improvements.

~~SEC. 5.~~

*SEC. 7.* Section 5898.30 of the Streets and Highways Code is amended to read:

5898.30. (a) Notwithstanding Section 5898.28 and except as otherwise provided in subdivision (b), assessments levied pursuant to this chapter, and the interest and any penalties thereon shall constitute a lien against the lots and parcels of land on which they are made, until they are paid. Division 10 (commencing with Section 8500), insofar as those provisions are not in conflict with this chapter, Article 13 (commencing with Section 53930) of, and

Article 13.5 (commencing with Section 53938) of, Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code shall only apply to the collection of assessments contracted for pursuant to this chapter, which may be collected in the same manner and at the same time as the general taxes of the city or county on real property. Any assessment levied pursuant to this chapter shall have the force, effect, and priority of a judgment lien as established by the date of its recordation.

(b) Assessments levied pursuant to Section 5898.28 against nonresidential private property or residential private property with five or more units and the interest and any penalties thereon shall constitute a lien against the lots and parcels of land on which they are made, until they are paid. Division 10 (commencing with Section 8500), insofar as those provisions are not in conflict with this chapter, Article 13 (commencing with Section 53930) of, and Article 13.5 (commencing with Section 53938) of, Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code apply to the imposition and collection of assessments contracted for pursuant to this chapter, including, but not limited to, provisions related to lien priority, the collection of assessments in the same manner and at the same time as the general taxes of the city or county on real property, unless another procedure has been authorized by the legislative body or by statute, and any penalties and remedies in the event of delinquency and default.

CORRECTIONS:

Text—Page 12.